

09 Sept 1998

SENT VIA FEDERAL EXPRESS

Gordon R. Parker
Newmont Mining Company
1700 Lincoln Street
Denver, CO 80203

Newmont Mining Company
CT Corporation Systems
1633 Broadway
New York, NY 10019

URGENT LEGAL MATTER

Re: Notice of Federal Interest/Request for Information
Pursuant to 104(e) of CERCLA
Grey Eagle Mine Site
Indian Creek Road
Happy Camp, California

Dear Sir or Madam:

The United States Environmental Protection Agency ("EPA") is in the process of preparing to undertake a removal action pursuant to Section 104(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9604(a), to control the actual or threatened releases of hazardous substances, pollutants, or contaminants from the Grey Eagle Mine located on Indian Creek Road, 5 miles north of Happy Camp, California ("the Site"). The purpose of this letter is twofold: 1) to inform you that based on available evidence, EPA has reason to believe that Newmont Mining Corporation ("NMC") is a potentially responsible party ("PRP") with regard to the Site; and 2) to request additional information regarding your actions and activities at the Site.

This letter notifies you of your potential liability as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. Section 9607(a), that you may incur or may have incurred with respect to EPA's response actions at the Site.

Potentially responsible parties under CERCLA Section 107(a), 42 U.S.C. § 9607(a), include all current owners and operators of a site, all former owners and operators of facilities at the time hazardous substances were disposed of, all persons who arranged for the disposal of hazardous substances at a facility ("generators"), and all persons who accepted hazardous for transport to a facility ("transporters"). EPA has evaluated

evidence obtained through its investigation and determined that NMC may be a PRP as a former owner or operator at the Grey Eagle Mine. Additionally, EPA has reason to believe that NMC, by acquisition, merger, agreement, or other mechanism, owns subsidiaries which either operated at or owned the Grey Eagle mine and are responsible for the release of hazardous materials and substances which came to be located upon the Site.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), a PRP may be obligated to finance or undertake actions that EPA determines are necessary to protect public health, welfare, or the environment and may be liable for all costs incurred by the Government in responding to any release or threatened release at the Site. Such costs include, but are not limited to, expenditures for investigation, planning, response, and enforcement activities.

Between 1941 and 1945, the Grey Eagle Copper Company, a subsidiary of Newmont Mining Company, conducted mining, ore processing and waste disposal activities at the Grey Eagle Mine. Mine tailings from these operations were deposited at the Site adjacent to Indian Creek below the confluence with Luther Gulch Creek.

After the closure of the Grey Eagle Mine, Willamette Builders Supply Company, Willamette Plywood Corporation, Josephine Plywood Corporation and the Croman Corporation owned and/or operated the Site. In the 1950's and the 1960's, the Site was excavated and used for saw milling operations. In the course of these operations large amounts of tailings were graded onsite, and some were formed into a mill pond. As a result, the tailings came to be located on and near Indian Creek.

The copper ore body at the Grey Eagle Mine was a massive sulfide deposit. The mine tailings exhibit above background levels for copper, iron, arsenic and zinc. The tailings are also characterized as having high levels of sulfates and low pH. As the tailings weather, they leach metals and other constituents resulting in the direct discharge of hazardous substances into Indian Creek, a tributary of the Klamath River. Indian Creek is a known habitat of the coho salmon and steel head trout, both of which are endangered species.

On April 13, 1982, staff from the Regional Water Quality Control Board ("RWQCB") sampled runoff from the tailings disposal area and water from the leachate channel. Analytical results confirmed that the water had high electrical conductivity and a low pH. The sampling also demonstrated that the water contained concentrations of cadmium, copper, lead and zinc which exceeded EPA ambient water quality criteria for freshwater aquatic life protection. Again on January 13, 1987, RWQCB staff collected samples of the runoff from the Site and from the leachate

channel. Analytical results confirmed that the samples contained concentrations of copper and cadmium which exceed EPA ambient water quality for freshwater aquatic life protection.

On April 17 and 18, 1996, personnel from EPA conducted an assessment to determine the nature of the contamination present at the Site. Samples were collected from various locations and the analytical results indicated that the tailings and affected soils and sediments contained high concentrations of arsenic, copper, iron, and zinc. Bioassay tests were performed and the results indicated that the leachate in the channel was lethal to 100% of the test fish. These findings were confirmed by EPA's most recent site investigation on August 19, 1998.

EPA has determined that current conditions at the Site present an imminent and substantial endangerment to public health, welfare, and environment and has concluded that a removal should be conducted within the next two weeks to stabilize the actual or potential threat posed by the continual leaching of hazardous materials and substances from the Site.

By this letter, EPA is providing you an opportunity to participate in the response actions EPA will undertake at the Site. EPA requests that you contact EPA's Federal On-Scene Coordinator, Robert Mandel, at (415) 744-2290 within forty-eight (48) hours of receipt of this letter, to discuss NMC's implementation of the removal activities outlined in the Scope of Work. (see enclosure A).

If EPA does not receive a timely response, EPA will assume that NMC does not want to perform these activities and proceed accordingly. EPA looks forward to working with you in a cooperative manner. If you have any legal questions, please contact, Assistant Regional Counsel, David Rabbino at (415) 744-1336.

Information Request

In addition to believing that NMC is a PRP at the Site, EPA believes that NMC may be in possession of information that is relevant to its investigation of conditions at the Site. Pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), EPA requests that you respond to the Information Request as set forth in Enclosure B and answer the questions contained therein. Federal law requires NMC to provide the requested information and documents to EPA.

Section 104(e)(2) of CERCLA provides that EPA may require, "... any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

- (a) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.
- (B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.
- (C) Information relating to the ability of a person to pay for or to perform a cleanup."

While we anticipate NMC's cooperation with this request, please be advised that NMC's duty to respond to this information request is mandatory, and if NMC fails to respond fully and truthfully to this information request or if NMC fails to justify why it cannot respond, EPA is authorized to take an enforcement action under Section 104(e) of CERCLA. This provision authorizes EPA to seek imposition of civil penalties of up to twenty-five thousand dollars (\$25,000) for each day NMC do not comply. Providing false, fictitious, or fraudulent statements or representations may subject NMC to criminal penalties under 18 U.S.C. Section 1001.

Please send NMC's responses within fifteen (15) days of the date of this letter to:

John Jaros
U.S. Environmental Protection Agency
Emergency Response Office (SFD-6)
75 Hawthorne Street
San Francisco, CA 94105

Please include with NMC's response a signed statement: 1) that NMC completed a diligent search of all corporate records; and 2) that all information responsive to EPA's request has been sent.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3501 et seq.

EPA has the authority to use the information requested herein in an administrative, civil, or criminal action. NMC may assert a business confidentiality claim covering all or part of the information requested in this letter as provided in 40 C.F.R. Section 2.203(b). To make a confidentiality claim, attach a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential" and indicate a date, if any, when the information should no longer be treated as confidential. All confidentiality claims are subject to agency verification and

must be made in accordance with 40 C.F.R. Section 2.08, which provides, in part, that the submitter of information demonstrate it has taken reasonable measures to protect the confidentiality of the information and that the submitter intends to continue to do so and that the information is not and has not been reasonably obtainable by legitimate means without the submitter's consent.

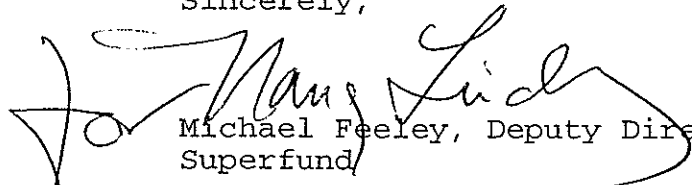
Information covered by such a claim will be disclosed by EPA only to the extent permitted by law. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidential claim with NMC's response to this letter as a waiver of that claim, and information may be made available to the public without further notice to NMC.

Pursuant to 40 C.F.R. Section 2.310(h), Disclosure to Authorized Representatives, NMC is given notice of the contemplated disclosure by EPA of the information provided in response to this Information Request to authorized representatives of EPA. EPA's authorized representatives include Armstrong Data Services and Science Applications International Corporation. Any subsequent additions or changes in EPA contractors who may have access to NMC's responses will be published in the Federal Register. This information may be made available to these authorized representatives of EPA for any of the following reasons: to assist with document handling, inventory, and indexing. Pursuant to 40 C.F.R. § 2.310(h), NMC may submit comments on EPA's disclosure of any confidential information contained in NMC's response to EPA's authorized representatives within fifteen (15) days of receipt of this notice.

EPA appreciates NMC's responsiveness to EPA's information request. For EPA to complete its investigation, however, it is necessary that EPA receive prompt responses to its information request. If NMC has any additional questions or needs further information, please call John Jaros at (415) 744-2316.

EPA appreciates NMC's cooperation and prompt attention to this matter.

Sincerely,


Michael Feeley, Deputy Director
Superfund

cc: David Evans, State of California
Polly Haessig, U.S. Forest Service

ENCLOSURE A
SCOPE OF WORK

The site is approximately 20 acres in size containing approximately 475, 000 cubic yards of mill tailings. The site borders Indian Creek. Indian Creek is a critical habitat for many species of wildlife, especially the coho salmon, king salmon, and steel head trout. Additionally, Indian Creek is used by residents for drinking, irrigation, and recreation. These are the principal immediate threats:

1. The continuing release of acid rock drainage (ARD) contaminated with hazardous substances (heavy metals) to Indian Creek.
2. The potential collapse of heavy metals-contaminated mill tailings directly into Indian Creek due to the instability of the tailings on several portions of the site.

In order to adequately respond to the immediate threats, the following actions are required:

1. Consolidate all mill tailings on the site and stockpile them on the former log pond prior to grading and capping.
2. Reduce the slope between the log pond and Indian Creek from its present 1:1 grade to a gentler 2.5:1 slope to reduce the threat of collapse to Indian Creek..
3. Grade the tailings in the log pond to a 50:1 slope connecting to the 2.5:1 portion.
4. Cover the entire tailings area in the log pond (approx. 14 acres) with a 60 mil (0.060 inches) High Density Polyethylene (HDPE) liner to prevent the further oxidation of the mill tailings and to prevent water from infiltrating the tailings pile.
5. Cover the liner with 12 inches of clean soil and seed with native grasses.

ENCLOSURE B
INFORMATION REQUEST

INSTRUCTIONS

1. Please provide a separate narrative response to each and every question and subpart of a question set forth in this Information Request. Information must be provided to EPA whether or not such information is contained in available documents.
2. Precede each answer with the number of the question to which it corresponds. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the question to which it corresponds.
3. Where any person covered by this request has information which has not been memorialized in any document, but is nonetheless responsive to a question, you must also provide such information in response to this request.
4. For each and every question contained in this letter, if information responsive to this Information Request is not in your possession, custody or control, then identify the persons from whom such information may be obtained. For each individual, please provide the following: name, last known or current address, telephone number, and affiliation with your company or the Site.
5. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find, at any time after submission of its response, that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide EPA with a corrected response.
6. The scope of this request includes all information and documents independently developed or obtained by research on the part of your company, its attorneys, consultants or any of their agents, consultants or employees.
7. For each document produced in response to this Information Request, indicate on the document or in some other reasonable manner the number of the question to which it responds.
8. The information requested herein must be provided even if you and your company contend it includes possibly confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information re-

requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, as amended by SARA, 42 U.S.C. Sections 9604(e)(7)(E) and (F), and 40 C.F.R. § 2.203(b), by attaching to such information at the time it is submitted a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential". Information covered by such a claim will be disclosed by EPA only to the extent and only by means of the procedures set forth in the statutes and regulation identified above. All confidentiality claims are subject to agency verification and must be made in accordance with 40 C.F.R. § 2.08 which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.

9. To the extent that there are any documents that are responsive to this Information Request that you are withholding for any reason, you should identify the document and state your basis for withholding the document. To the extent that you do not respond to any request, please describe your basis for withholding the information.

DEFINITIONS

The following definitions shall apply to the words appearing in our letter and Enclosure A.

1. The term "person" has the same definition as Section 101(21) of CERCLA: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State or any interstate body.

2. The term "the Site" means the property located 5 miles north of Happy Camp, California on Indian Creek Road.

3. The term "hazardous substance" has the same definition as Section 101(14) of CERCLA and includes any mixtures of hazardous substances with other substances, including petroleum products.

4. The term "pollutant or contaminant" has the same definition as Section 101(33) of CERCLA, and includes any mixtures of pollutants and contaminants with any other

substances. Petroleum products mixed with pollutants and contaminants are also included.

5. The term "materials" means all substances that have been generated, treated, stored, or disposed of or otherwise handled at or transported to the Facility, including but not limited to all hazardous substances, pollutants and contaminants, hazardous wastes, and solid wastes, as defined above.

6. The term "hazardous material" means all hazardous substances, pollutants or contaminants, as defined above.

7. The term "identify" means, with respect to an individual person, the person's name, business address, business telephone number, home address, and person's title, position, or business.

8. The term "identify" means, with respect to a corporation, partnership, business trust, other association or business entity (including sole proprietorship) the full name, address, legal form of organization (e.g. corporation, partnership, etc.), if any, and a brief description of the business.

9. The term "identify" means, with respect to a document, its normal business description, its date, its number, any (invoice or purchase order number), the identity of the author, addresser, addressee and/or recipient, and substance or the subject matter.

10. The term "release" has the same definition as Section 101(22) of CERCLA, 42 U.S.C. 9601(22), and includes any spilling, leaking, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substances or pollutant or contaminant.

11. The terms "document" or "documents" means any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting. It includes any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, correspondence, record books, minutes, memorandum of telephone and other conversations including meetings, agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photostat or other copy of any documents, microfilm or other film record, and photograph, sound recording on any tape or device, any punch card, disc or disc pack; any tape or other tape of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use some punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, or disc pack, tape or other type of memory); and (a)

every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation, or the like on it, drafts, (d) attachments to or enclosures with and (e) every document referred to in any other document.

12. The terms "and" and "or" shall be construed either disjunctively or conjunctively to bring within the scope of this Information Request any information which might be construed to be outside its scope.

13. Words in the masculine shall be construed in the feminine, and vice versa and words in the singular shall be construed in the plural, and vice versa.

14. All terms not defined have their ordinary meaning unless such terms are defined in CERCLA, 40 C.F.R. Parts 260-280, in which case statutory or regulatory definitions apply.

QUESTIONS

1. Describe the nature of Newmont Mining Company's business dealings with the Grey Eagle Copper Company. Include copies of any agreements, leases, deeds, contracts, manifests, or other documents which are relevant to your response.
2. Describe the nature of Newmont Mining Company's business dealings with Willamette Builders. Include copies of any agreements, leases, deeds, contracts, manifests, or other documents which are relevant to your response.
3. Describe the nature of Newmont Mining Company's business dealings with Willamette Plywood. Include copies of any agreements, leases, deeds, contracts, manifests, or other documents which are relevant to your response.
4. Describe the nature of Newmont Mining Company's business dealing with Josephine Plywood Company. Include copies of any agreements, leases, deeds, contracts, manifests or other documents which are relevant to your response.
5. Describe the nature of Newmont Mining Company's business dealings with Croman Corporation. Include copies of any agreements, leases, deeds, contracts, manifests or other documents which are relevant to your response.
6. Describe the nature of Newmont Mining Company's business dealing with Willamette Industries. Include copies of any purchase or ownership agreements, leases, deeds, contracts, or other documents which are relevant to your response.
7. Describe the nature of any releases of hazardous substances at the Grey Eagle Mine Site which you are aware of, including the date of such release(s), the quantity of hazardous substances released, and what if any measures were taken by any person to address such release(s).

8. Identify all persons answering these questions on behalf of Newmont Mining Corporation.

9. For every question, identify any person(s) or document(s) consulted in the preparation of the response.